

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
NOVEMBER 9, 2010**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Mark Hash, Gary Krueger and Craig Wagner. Scott Hollinger had an excused absence. Allison Mouch and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 11 people in the audience.

**APPROVAL OF
MINUTES**

Klempel motioned and Krueger seconded to approve the October 5, 2010 minutes. The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**FWP (STREET
POND)
(FPAE 10-03)**

A request by Montana Fish, Wildlife & Parks for a zoning exemption to acquire a 12.789 acre parcel, containing the Pine Grove Family Fishing Pond, which is contrary to the current AG-80 (Agricultural) zoning for the area. The property is located at 1414 Rose Crossing; adjacent to the Whitefish River and north of the city of Kalispell. Montana Fish, Wildlife & Parks gave notice to the Board of Adjustment of Flathead County that it intends to own and manage the Pine Grove Family Fishing Pond. Pursuant to 76-2-402, MCA, the board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

STAFF REPORT

Allison Mouch reviewed staff report FPAE 10-03 for the board.

**BOARD
QUESTIONS**

Krueger and staff discussed if it was possible to void the existing CUP since the property would no longer be a gravel pit and a CUP runs with the property.

Grieve said there was no mechanics as it stood now to void an existing CUP.

**PUBLIC
COMMENT**

Krueger asked to hear from Robin Street.

Street updated the board on the progress of the reclamation of

the gravel pit.

Krueger wanted to thank Street, the Fish, Wildlife and Parks and everyone involved in the project. He said this project could be an example for other reclamation projects of gravel pits.

Jim Vashro, Montana Fish, Wildlife and Parks, 490 N Meridian, wanted to acknowledge Robin Street and his family for the work they had put into the project, and thanked the board and planning staff for their work as well. He invited the board and staff to use the pond in the future.

**WINK &
COMPANY
(FZV 10-03)**

A request by Wink, Clausen and Anderson Trust for a Zoning Variance to property within the Bigfork CVR (Commercial Village Resort) Zoning District. The applicants are requesting a variance to Section 3.26.40 (4), Bulk and Dimensional Requirements, of the Flathead County Zoning Regulations, which states the maximum building height cannot exceed 35 feet.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FZV 10-03 for the Board and passed out handouts.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Mike Fraser gave an overview of the application which included the allowed uses for the district and examples of other multifamily buildings in the area, some of which had faced the same challenges this application faced concerning topography. He discussed at length the reasons, which included the site topography limitations on the lot's size and why they asked for a height variance.

Rob Wink wanted to put a different perspective on the application. He discussed the history of how this application came to being and referenced letters of support as well as the similarity of the situation to Marina Cay which received a variance from the board previously.

**BOARD
QUESTIONS**

Klempel and Fraser discussed if the applicant planned to remove any of the existing fill on the property.

**AGENCY
COMMENTS**

Julie Spencer, District Manager for Bigfork Water and Sewer, spoke about how the proposed building structure would

encroach on the sewer system. She read and elaborated on a letter which had been handed out to the board before the

meeting started from Bigfork Water and Sewer. She explained why they didn't move the main sewer line.

**PUBLIC
COMMENT**

Cherie Hansen, P. O. Box 785, Bigfork, was in favor of the application.

Katie Brown, P. O Box 557, Bigfork, was in favor of the application.

Bill Meyers, 570 Lake Ave, Bigfork, was in favor of the application.

Tom Brown, P O Box 557, Bigfork, was in favor of the application.

**BOARD
DISCUSSION**

The board and Wink discussed if the sewer main appeared on the deed when he purchased the property and easements.

Hash, staff, and Fraser discussed if granting a height variance would result in an encroachment on the sewer line meaning if it would allow a larger footprint for the building.

Hash said he hoped Bigfork Water and Sewer and the developer would be able to work out a solution to the encroachment issue.

Wagner reviewed BLUAC's comments on the application.

Krueger had also attended the BLUAC meeting and commended Hagemeyer and the applicant for further explaining how the building would look.

**APPLICANT
REBUTTAL**

Wink referenced the letter from his lawyer concerning Bigfork Water and Sewer's concerns.

**BOARD
DISCUSSION**

Hash said he thought the request was a reasonable request; the planning office's report was excellent as well as Fraser's presentation.

**MAIN MOTION
TO ADOPT FZV
10-03 AS F.O.F
AND APPROVE**

Hash motioned and Krueger seconded to adopt staff report FZV 10-03 as findings-of-fact and approve.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO ADOPT FZV
10-03 AS F.O.F
AND APPROVE**

On a roll call vote, the motion failed 2-2 with Klempel and Wagner dissenting.

**BOARD
DISCUSSION**

Fraser asked since the motion had a tied vote, the board table further discussion until a full board was present.

Grieve said that could not be done and quoted from the zoning regulations the reasons why. The application had been voted on. He suggested alternate ways to continue.

The board and Grieve discussed at length possible ways to continue given the circumstances.

**MAIN MOTION
TO ADOPT
STAFF REPORT
FZV 10-03 AS
F.O.F.**

Krueger motioned and Hash seconded to adopt staff report FZV 10-03 as findings-of-fact.

**BOARD
DISCUSSION**

Krueger asked Hagemeyer if he had any reason to believe the findings found in the staff report were incorrect.

Hagemeyer stood by his staff report.

Krueger asked Fraser if he saw anything in the staff report concerning findings-of-fact which were incorrect.

Fraser said no.

The board and Grieve discussed if they ever added conditions on variances, the concerns of the members who had voted nay on the previous motion, encroachment on the sewer line and what the board's roll in the process was.

**MOTION TO
CALL FOR THE
QUESTION**

Krueger motioned to call for the question.

ROLL CALL

On a roll call vote, the motion passed unanimously.

**VOTE TO CALL
FOR THE
QUESTION**

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT STAFF
REPORT AS
F.O.F.
(FZV 10-03)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

The board and Grieve discussed who could make a motion, and the history of what had happened concerning motions so far in the meeting.

**MAIN MOTION
TO APPROVE
(FZV 10-03)**

Krueger motioned and Hash seconded to approve FZV 10-03.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
APPROVE
(FZV 10-03)**

On a roll call vote, the motion passed unanimously.

OLD BUSINESS

Wagner asked for an update on the BOA revocation issue.

Grieve said the issue had not been resolved and gave the board a brief explanation where the issue stood and what needed to be done.

NEW BUSINESS

Klempel asked what the agenda held for next month and when the growth policy meetings will be held.

Wagner brought up the Tutvedt v. Flathead County litigation.

Mike Sehestedt, Maco Legal Services, asked the board to close the session because it involved litigation strategy. He gave a brief history of why he was before the board.

MAIN MOTION

Klempel motioned and Krueger seconded to close the session.

**TO CLOSE
SESSION**

The motion passed unanimously.

**MOTION TO
RESUME THE
SESSION**

Craig Wagner motioned to resume the session.

ADJOURNMENT

The meeting was adjourned at approximately 8:40 pm. on a motion by Hash. The next meeting will be held at 6:00 p.m. on December 7, 2010.

Scott Hollinger, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 2/1/11*